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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 311.

JOHN CADWALADER, COLLECTOR OF CUSTOMS FOR THE DISTRICT OF PHILADELPHIA, PLAINTIFF IN ERROR,

vs.

ARTEMUS PARTRIDGE AND THOMAS D. RICHARDSON, TRADING AS PARTRIDGE AND RICHARDSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED DECEMBER 16, 1887.

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1 United States, eastern district of Pennsylvania, sct.

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you between Artemus Partridge and Thomas D. Richardson, trading as Partridge and Richardson, plaintiffs, and John Cadwalader, collector of customs for the district of Philadelphia, defendant in a plea of trespass on the case, a manifest error has intervened to the great damage of the said John Cadwalader, collector of customs for the district of Philadelphia, as in their complaint has been stated—and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf. You are hereby commanded that if judgment thereof be given, then under your seal, you do distinctly and openly send the record and process in the suit aforesaid with all things concerning them and this writ; so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October, next, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 21st day of November, A. D. one thousand eight hundred and eighty-seven, and in the one hundred and 12th year of the independence of the said United States.

SAMUEL BELL,
Clerk of Circuit Court U. S.

2 THE UNITED STATES OF AMERICA, *ss.*

To Artemus Partridge and Thomas D. Richardson, trading as Partridge and Richardson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the eastern district of Pennsylvania in the third circuit wherein John Cadwalader, collector of customs for the district of Philadelphia, is plaintiff and you are defendant in error to show cause if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, shall not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 29th day of November in the year of our Lord one thousand eight hundred and eighty-seven.

WM. BUTLER,
Judge.

I accept service of the above writ.

FRANK P. PRICHARD,
Att'y for def't in error.

DEC. 1, 1887.
5000——1

3 In the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit.

ARTEMUS PARTRIDGE AND THOMAS D. RICHardson, trading as Partridge and Richardson,
vs.
JOHN CADWALADER, COLLECTOR OF CUSTOMS, for the district of Philadelphia.

No. 4, April session, 1887.

UNITED STATES OF AMERICA,
Eastern district of Pennsylvania, ss:

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of April session, 1887, No. 4.

It is thus contained:

4 Be it remembered that on the twenty-eighth day of March, in the year of our Lord one thousand eight hundred and eighty-seven, John Cadwalader, collector of customs for the district of Philadelphia, by his attorney, John K. Valentine, esq., comes into court here and files his petition for a writ of certiorari, in the words and figures following, to wit:

5 In the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit.

The petition of John Cadwalader, collector of customs for the district of Philadelphia, respectfully represents:

That a suit has been commenced by summons case against him as defendant by Artemus Partridge and Thomas D. Richardson, trading as Partridge and Richardson, in the court of common pleas No. 4 for the county of Philadelphia, in the State of Pennsylvania, to March term, 1887, No. 323.

That the said suit is brought on account of an act done by him under the revenue laws of the United States as collector of the customs for the district of Philadelphia, the said suit being to recover a certain sum of money paid for and on account of the said plaintiffs to the said defendant as collector aforesaid as duties on certain merchandise.

Your petitioner respectfully prays that the said cause may be entered on the docket of your honorable court, and proceeded in as a cause therein originally commenced, and that a writ of certiorari be immediately issued by the clerk of your honorable court to the said court of common pleas No. 4 for the county of Philadelphia to send to the said circuit court of the United States the record and proceedings in said cause, according to the provisions of the act of Congress in such case made and provided.

And he will ever pray, &c.

JOHN CADWALADER,
Collector.

John Cadwalader, being duly sworn, says that the facts set forth in the above petition are true to the best of his knowledge and belief.

JOHN CADWALADER.

Sworn and subscribed before me this 23d day of March, 1887.

[SEAL.]

WM. MCLEAN,
Notary Public, Philadelphia.

I hereby certify, that as counsel for the above petitioner, I have examined the proceedings against him, and carefully enquired into all the matters set forth in the above petition, and that I believe the same to be true.

JOHN K. VALENTINE,
Att'y for Def't.

6 (Indorsed:) No. 4, April sessions, 1887. Circuit court, United States, eastern district of Pennsylvania, in the third circuit. Artemus Partridge et al. vs. John Cadwalader, collector, &c. Petition for certiorari. John K. Valentine attorney for petitioner. Filed 28 March, 1887.

7 And afterwards to wit, on the twenty-eighth day of March A. D. 1887, on motion of John K. Valentine, United States attorney, a writ of certiorari for the removal of this cause from the court of common pleas of Philadelphia County to this court, allowed and issued, which, with the endorsement and return thereto, is in the words and figures following, to wit:

8 United States of America, eastern district of Pennsylvania, Set.

The President of the United States, to the honorable the judge of the court of common pleas, 4, for the county of Philadelphia in the State of Pennsylvania, greeting:

Whereas, lately in your said court of common pleas, No. 4, a suit was commenced against John Cadwalader, collector of customs for the district of Philadelphia, by Artemus Partridge, and Thomas D. Richardson, trading as Partridge and Richardson, to your March term, 1887, No. 323, which said suit, as it is said, is still pending before you in the said court of common pleas No. 4 undetermined, and whereas, on the application of the said John Cadwalader, collector &c., to the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit, on a suggestion supported by proper evidence, that the said suit was brought on account of an act done by him, under color of his office, as collector of customs for the district of Philadelphia, the said suit having been brought to recover certain moneys paid by the said plaintiff to the said John Cadwalader, collector &c., aforesaid, for duties on certain merchandise, &c., claimed to be due and owing from the said plaintiff to the United States of America, and praying that a writ of certiorari may be immediately issued by the clerk of the said circuit court of the United States, directed to the said court of common pleas No. 4, to send to the said circuit court of the United States the record and proceedings in the said cause, according to the provisions of the act of Congress, in such case made and provided.

Wherefore you are hereby commanded to transmit, under your seal, the record and proceedings of the said suit, with all things thereunto relating, unto the circuit court of the United States, to be holden at Philadelphia, for the eastern district of Pennsylvania, in the third circuit, on the first Monday of April next, plainly and distinctly, in as full and ample manner as it now remains before you; together with this writ, so that the said

circuit court of the United States may be able therein to proceed and do what shall appear of right ought to be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, at Philadelphia, this 28 day of March, A. D. 1887, and in the 111th year of the Independence of the United States.

[SEAL.] SAMUEL BELL, *Clerk of Circuit Court, U. S.*

9 (Indorsed:) No. 4. C. P., No. 4, April sess., 1887. Circuit court, U. S. Partridge et al. vs. Cadwalader, collector &c. Writ of certiorari. Mch. 31, 1887, brot. into office. Filed 18 May, 1887.

10 EXEMPLIFICATION.

PHILADELPHIA COUNTY,
State of Pennsylvania, sct.:

Among the records and proceedings of the court of common pleas No. 4 for the county of Philadelphia, State of Pennsylvania, the following may be found as matter of file and record, at No. 323 of March term, 1887, to wit:

Docket entries, March term, 1887.

ARTEMAS PARTRIDGE, THOMAS D. RICHARDSON, trading as Partridge and Richardson, vs. JOHN CADWALADER, COLLECTOR OF CUSTOMS FOR the district of Phila.	Prichard, 323. Valentine, Mch. 25, '87.

Sums. case. Exit Mch. 15, 1887. Ret. 1 Mon. April, 1887. Served March 31, 1887. Certiorari from circuit court of U. S. for E. D. of Penna. (of April sess., 1887, No. 4) bro't into office Mch. 30, 1887. Narr & rule to plead filed.

Certified from the record May 12, 1887.

[SEAL.] E. LINDSAY,
Pro Proth'y.

11

ARTEMAS PARTRIDGE AND THOMAS D. Richardson, trading as Partridge and Richardson, *vs.* JOHN CADWALADER, COLLECTOR OF CUSTOMS for the district of Philadelphia.	C. P., No. 4. Mch. T., 1887. No. 323.

Issue summons case as above, retble. 1st Monday April, 1887.

FRANK P. PRICHARD,
Atty. for Plffs.

To Proth'y, C. P.

MCH. 15, '87.

(Endorsed:) 323. March term, 1887. C. P., No. 4. Partridge vs. Cadwalader. Præcipe for sums. case. Filed Mar. 15, 1887. F. P. Prichard.

12 *Summons.*

COUNTY OF PHILADELPHIA, *ss.:*

The Commonwealth of Pennsylvanania to the sheriff of the county of Philadelphia, greeting:

We command you that you summon John Cadwalader, collector of customs for the district of Philadelphia, late of your county, so that he be and appear before our judges at Philadelphia, at our court of common pleas, No. 4, of the county of Philadelphia, to be holden at Philadelphia, in and for said county, on the first Monday of April next, there to answer Artemas Partridge and Thomas D. Richardson, trading as Partridge and Richardson, of a plea of trespass on the case, etc., and have you then and there this writ.

Witness the honorable M. Russell Thayer, president judge of our said court, at Philadelphia, the 15th day of Mch., in the year of our Lord one thousand eight hundred and eighty—

GEO. W. HAMERSLY,
Pro Prothonotary.

13 (Indorsed:) 323. Mch. term, 1887, court of common pleas, No. 4. Artemas Partridge et al. vs. John Cadwalader, collector. Summons case. F. P. Prichard.

Served John Cadwalader, collector, &c., by giving to him, March 19th, 1887, a true and attested copy of the within writ, and making known to him the contents thereof.

So answers

JAMES G. GOSH,
Deputy Sheriff.
JNO. J. RIDGWAY,
Sheriff.

14 ARTEMAS PARTRIDGE AND THOMAS D. RICHARDSON, trading as Partridge and Richardson,
vs.
JOHN CADWALADER, COLLECTOR OF CUSTOMS, &c.

C. P., No. 4. March term, 1887. No. 323.

Please enter my appearance for the defendant in the above case.

JOHN K. VALENTINE,
Atty. for Def't.

To Proth'y, C. P.

(Endorsed:) No. 323. March term, 1887. C. P., No. 4. Partridge & Richardson et al. vs. John Cadwalader. Order for appearance for defendant. Filed Mar. 25, 1887. Pro Proth'y. John K. Valentine, U. S. atty.

15 In the court of common pleas No. 4, for Philadelphia County, of March term, 1887.

ARTEMAS PARTRIDGE ET AL.
vs.
JOHN CADWALADER, COLLECTOR, & CO. } No. 322.

PHILADELPHIA COUNTY, *ss:*

John Cadwalader, collector of customs for the district of Philadelphia, late of the county aforesaid, was summoned to answer Artemas Partridge and Thomas D. Richardson, trading as Partridge and Richardson, of a plea of trespass, on the case, &c. Whereupon the said Artemus Partridge and Thomas D. Richardson, trading as Partridge and Richardson, by Frank P. Prichard, their attorney, complain.

16 And also, for that whereas the defendant on the first day of March, in the year of our Lord one thousand eight hundred and eighty-seven, at the county aforesaid, was indebted to the plaintiff in fifty thousand dollars for goods then and there sold and delivered by the plaintiffs to the defendant at his request;

And also in the further sum of fifty thousand dollars, for goods then and there bargained and sold by the plaintiffs to the defendant at his request;

And also in the further sum of fifty thousand dollars, for work then and there done and materials for the same provided by the plaintiffs for the defendant at his request;

And also in the further sum of fifty thousand dollars, for money then and there lent by the plaintiffs to the defendant at his request;

And also in the further sum of fifty thousand dollars, for money then and there paid by the plaintiffs for the use of the defendant at his request;

And also in the further sum of fifty thousand dollars, for money then and there had and received by the defendant for the use of the plaintiffs;

And also in the further sum of fifty thousand dollars, for money found to be due from the defendant to the plaintiffs on an account then and there stated between them;

And also in the further sum of fifty thousand dollars, for interest then and there due and payable for the forbearance by the plaintiffs at the defendant's request for moneys before then due and owing from the defendant to the plaintiffs.

And the defendant afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, in consideration of the several last mentioned premises, respectively then and there promised the plaintiff to pay them the said several last-mentioned moneys, respectively, on request; yet the defendant hath disregarded his promises and has not paid any of the said moneys, or any part thereof, to the damage of plaintiffs fifty thousand dollars.

And therefore they bring suit, &c.

FRANK P. PRICHARD,
Attorney for Plaintiffs.

MCH. 28, '87.

(Indorsed:) Court of common pleas No. 4. Philadelphia County. No. 323. March term, 1887. C. P. 4. Artemus Partridge et al. vs. John Cadwalader. Narr. in Assumpsit. F. P. Prichard, plaintiff's attorney. Filed Mar. 30, 1887.

17 *Bill of particulars. Name of importer (for all the importations), Partridge & Richardson.*

	Description of goods.	Name of vessel.	Whence imported.	Date of invoice.	Amount of duty illegally exacted.
1	Buttons	La Bourgogne	Havre	June 17, 1886	19.20
2	"	" "	" "	" "	39.20
3	"	St. Laurent	"	July 7, 1886	9.60

	Description of goods.	Date of entry at custom-house.	Date of payment of duties in excess.	Protest filed.	Date of appeal to the Secretary of the Treasury.	Date of Secretary's decision.
1	Buttons	June 28, 1886	Dec. 8, 1886	Dec. 8, 1886	Dec. 8, 1886	Feb'y 26, 1886
2	"	" " "	" " 4, "	" " "	" " "	" " "
3	"	July 22 "	Nov. 6, "	Nov. 6, "	Nov. 6, "	" " "

18 And afterwards, to wit, on the twenty-eighth day of July, A. D. 1887, the defendant, by his attorney, John K. Valentine, esq., comes into court here and files his plea in the words and figures following, to wit:

In the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit, April sessions, 1887, No. 4.

PARTRIDGE
vs.
CADWALADER.

And the said defendant, by John K. Valentine, esquire, his attorney, comes and defends the wrong and injury, when, &c., and saith that he did not undertake or promise in manner and form as the said plaintiffs have above thereof complained against him, and of this he puts himself upon the country.

JOHN K. VALENTINE,
Attorney for Defendant.

19 (Indorsed:) No. 4, April sessions, 1887, in the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit. Partridge vs. Cadwalader. Plea of defendant. John K. Valentine, attorney for defendant. Filed 28 July, 1887.

20 And, thereupon, it is ordered that a jury come to try the issue joined in this case.

And afterwards, to wit, on the third day of October, A. D. 1887, come the parties aforesaid, and the jurors of the jury aforesaid being called, likewise come, to wit: Charles Moore, Alex. L. Crawford, George Drayton, Michael Nisbet, John H. Rhoads, Edward H. Coates, William

Milligan, Royal Taft, Benjamin I. Taylor, Frederick S. Bletz, William W. Adams, Milton G. Potts, who are duly empaneled, returned, chosen, tried and sworn, or affirmed to speak the truth in the issue joined in this case.

And afterwards, to wit, on the day and year last aforesaid, the jurors aforesaid, upon their oaths or affirmations aforesaid, respectively do say that they find specially as follows, to wit:

21 In the circuit court of the United States, eastern district of Pennsylvania.

ARTEMUS PARTRIDGE ET AL. *vs.* JOHN CADWALADER, COLLECTOR. } April sessions, 1887. No 4.

Special verdict.

The jury find that:

1. In the year 1886 the plaintiffs were merchants in the city of Philadelphia, and the defendant was collector of the customs for the district of Philadelphia.

2. The plaintiffs, on June 28, 1886, and July 22, 1886, imported into the port of Philadelphia three cases of buttons, which were duly entered at the custom-house, and warehouse bonds were duly taken in the form hereto annexed.

3. These buttons were entered for warehouse June 28 and July 22, 1886, and the defendants liquidated the duties thereon on the 27th of July and the 14th of August, 1886, at the sum of $139.50, being at the rate of 45 per cent. on the value of the articles as brass buttons,
22 under section 6 of the act of March 3, 1883. This rate of duty was in accordance with the instructions theretofore issued by the Treasury Department.

4. No protest was made by plaintiffs against this liquidation and no appeal was taken.

5. On November 6, December 4, and December 8, 1886, plaintiffs made withdrawal entries of said buttons for consumption. In the meantime the ruling of the Treasury Department had been changed and, under instructions from the Secretary of the Treasury, buttons of the character of those imported by plaintiffs were dutiable at 25 per cent. ad valorem as buttons not specially enumerated or provided for.

6. The defendant, as collector aforesaid, upon the entry of said buttons for consumption and the application of plaintiffs to withdraw them from the warehouse, exacted a duty thereon of 45 per cent. ad valorem as brass buttons. The plaintiffs, in order to obtain said buttons, paid, on November 6, December 4, and December 8, 1886, respectively, the duty so exacted, and within ten days (after the withdrawal entry for consumption) made protests against the exaction of said duty and made due appeals to the Secretary of the Treasury, who, on February 25, 1887, affirmed the decision of defendant, whereupon the plaintiffs, on March 15, 1887, brought this suit.

7. The duty on said buttons at the rate of 25 per cent. ad valorem, as aforesaid, amounts to $85. The amount of duty thereon exacted by the defendant and paid by plaintiffs under protest was $139.50. The amount

exacted by defendant over and above the amount claimed to be due by plaintiffs is the sum of $62.

And the said jurors say that they are ignorant in point of law on which side they ought upon the facts to find the issue; but that if the court
23 should be of opinion that plaintiffs were obliged to protest against the liquidation made at the time of the entry of the goods for warehouse in order to take advantage of the legality of the exaction of the duties at the time of the entry for consumption, and application to withdraw from the warehouse, then they find for defendant; but that if the court should be of opinion that plaintiffs' protest, made within ten days of the defendant's refusal to allow the goods to be withdrawn from the warehouse except upon payment of the duties in accordance with the liquidation made at the time of entry for warehouse, was in time, then they find for the plaintiff in the sum of $62, with interest from December 8, 1886.

No. 2758.]

Warehousing bond.

Know all men by these presents, That we, Partridge & Richardson, as principals, and F. W. Weigman, as sureties, are held and firmly bound unto the United States of America in the sum of $1,000, to be paid to the United States, for the payment whereof we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents. Witness our hands and seals, at the port of Philadelphia, this 14th day of July, 1886.

Whereas, Certain goods, wares and merchandise, consisting of ten cases beads, etc., were originally imported at the port of Philadelphia, in the "La Burgogne" & R. R., whereof is master, from Havre and N. Y., on the 28th day of June, 1886.

And whereas, The above bounden principals have this day entered the same at the port of Philadelphia, under the laws of the United States providing for the warehousing of merchandise in bond as per warehouse entry number 7,483, in which the said goods, wares, and merchandise are also described or set forth.

24 Now, therefore, the condition of the above obligation is such, that if, within one year from the said date of original importation, the said goods, wares or merchandise shall be regularly and lawfully withdrawn from public store or bonded warehouse on payment of the legal duties and charges to which they shall then be subject, or if, after the expiration of one year, and within three years from the said date of original importation, they shall be so withdrawn upon the like payment with 10 per centum added upon the amount of such duties and charges, or if, at any time within three years from the said date of original importation, they shall be so withdrawn for actual export beyond the limits of the United States, then the above obligation to be void, otherwise, to remain in full force.

PARTRIDGE & RICHARDSON,
W. O. HEMPSTEAD, *Attorney.*
F. W. WIEGMAN,
534 *Franklin Street.*

Signed, sealed and delivered in the presence of
J. H. ADAMS.
5000——2

25 And afterwards, to wit, on the twenty-eighth day of October, A. D. 1887, come the parties aforesaid, and this cause being called for argument on special verdict, and having been argued by counsel for the respective parties and duly considered by the court, it is ordered that judgment be entered on special verdict in favor of the plaintiffs for the sum of sixty-two dollars ($62.00) with interest from December 8th, 1886.

Whereupon judgment is entered accordingly.

26 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set:

I, Samuel Bell, clerk of the circuit court of the United States of America, for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original record and proceedings in the case of Artemus Partridge et al. vs. John Cadwalader, collector of customs for the district of Philadelphia, No. 4, April session, 1887, on file and now remaining among the records of the said court, in my office.

In testimy whereof, I have hereunto subcribed my name and affixed the seal of the said court, at Philadelphia, this 5th day of December in the year of our Lord one thousand eight hundred and eighty-seven and of the Independence of the United States the one hundred and 12th.

[SEAL.] SAMUEL BELL,
Clerk of C. C.

(Indorsement on cover:) No. 311. John Cadwalader, collector of customs for the district of Philadelphia, plaintiff in error, vs. Artemus Partridge and Thomas D. Richardson, trading as Partridge and Richardson. E. Pennsylvania. C. C. U. S. Filed December 16, 1887.

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

JOHN CADWALADER, COLLECTOR, plaintiff in error, v. PARTRIDGE AND RICHARDSON. } No. 311.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR PLAINTIFF IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

JOHN CADWALADER, COLLECTOR, plaintiff in error, *v.* PARTRIDGE AND RICHARDSON. } No. 311.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR PLAINTIFF IN ERROR.

THE CASE.

The action below was brought by Partridge and Richardson, defendants in error, against Cadwalader, collector of customs for the district of Philadelphia, to recover an excess of duties illegally exacted on the importation of buttons. The only defense of the collector was that the notice of

dissatisfaction with his decision was not filed with him within the time required by section 2931 Revised Statutes. The case was tried before a jury which returned a special verdict. (Record, page 8.) Upon the verdict the court entered a judgment for $862 in favor of the plaintiff below. This writ is sued out on behalf of the collector to reverse that judgment.

STATEMENT OF FACTS.

The facts as they are found in the special verdict may be briefly stated as follows: Partridge and Richardson imported three cases of buttons in two entries, one on June 28, 1886, and the other on July 22 of the same year. The buttons were entered for warehouse and bonds given on these respective dates. On the 27th of July and 14th of August, 1886, respectively, while the buttons were in the warehouse they were classified by the collector as brass buttons, dutiable at 45 per cent. ad valorem in accordance with the instructions of the Treasury Department, and the two entries were then liquidated by him and the duties on the two entries ascertained to be $139.50. No protest was made against this liquidation or appeal taken.

Before the withdrawal of these buttons from warehouse, the Secretary of the Treasury changed his ruling as to the proper classification of such buttons in other importations and held them subject to a duty of 25 per centum only. The buttons in question were withdrawn from warehouse for consumption on November 6, December 4 and 8, 1886, and the duties as ascertained and liqui-

dated on the 27th of July and the 14th of August, *i. e.*, $139.50, on the basis of a rate of 45 per cent. ad valorem, were exacted from the importers. They paid the duty to get the goods and gave to the collector written notices of dissatisfaction within ten days from the withdrawal entries, and made due appeals to the Secretary of the Treasury, who on February 27, 1887, affirmed the decision of the collector. The action was brought in due time after such decision.

The conclusion of the special verdict is as follows:

> And the said jurors say that they are ignorant in point of law on which side they ought upon the facts to find the issue; but that if the court should be of opinion that plaintiffs were obliged to protest against the liquidation made at the time of the entry of the goods for warehouse in order to take advantage of the (il) legality of the exaction of the duties at the time of the entry for consumption, and application to withdraw from the warehouse, then they find for defendant, but that if the court should be of opinion that plaintiff's protest, made within ten days of the defendant's refusal to allow the goods to be withdrawn from the warehouse except upon payment of the duties in accordance with the liquidation made at the time of entry for warehouse, was in time, then they find for the plaintiff in the sum of $62, with interest from Dec. 8, 1886.

ASSIGNMENT OF ERROR.

The circuit court erred in giving judgment for the plaintiffs on the special verdict and in not giving judgment for the defendant.

ARGUMENT.

This case is submitted to be considered with the case of *Merritt, collector, plaintiff in error,* vs. *Cameron,* No. 84 on the present docket of this court. It presents substantially the same question that was argued in that case. The question is whether it is proper for the collector to liquidate the duties in due course on the entry for warehouse, or whether he must delay the liquidation until the withdrawal from warehouse.

In both cases there was no liquidation in fact at the time of the final withdrawal entry. The only liquidation in each case was on the entry for warehouse. If it was properly had when it was had, then the protest was not within the limit of ten days prescribed by section 2931 Revised Statutes. The only difference between this and the Cameron Case is in the fact that in 1880, when the importation was made in the Cameron Case, the ruling of the Department was that protest need not be filed until within ten days after the withdrawal entry of goods entered in bond for warehouse (Treasury Decision No. 2809, May 15, 1876); while in 1886, when the importation was made in the present case, the ruling had been changed, and the protest to be effective was required to be made within ten days from a liquidation had upon the warehouse entry (Treasury Decision No. 6895, May 2, 1885). In this case, therefore, the Government is not embarrassed by a ruling of the Treasury Department in conflict with the construction which it seeks to have put upon the statutes.

The relevancy and bearing of the finding, that the Sec-

retary of the Treasury changed the classifications of buttons of this kind after the liquidation here and before withdrawal is not very clear. Such a change of ruling certainly was not a change of the provisions of the tariff law. A decision by the Secretary or by a court reversing a previous erroneous ruling of the Department is of no aid to an importer who has not duly protested against a similar ruling with respect to another importation. The importer must make his own construction of the tariff law, and to save his rights thereunder must protest against any other construction without regard to the ruling of the Secretary.

Nor has the finding any significance in connection with the condition of the bond. That condition is, that if within one year from the date of importation the goods shall be withdrawn "on payment of the legal duties and charges to which they shall then be subject, or if, after the expiration of one year and within three years from the said date of original importation, they shall be so withdrawn upon the like payment, with 10 per centum added upon the amount of such duties and charges." The new ruling of the Treasury as to classification did not make the buttons liable to any different duty in law at the time of liquidation from that to which they were subject at the time of withdrawal.

It is claimed on behalf of the United States—

1. That the decision of the collector as to rate and amount of duties is final and conclusive, unless a protest is filed within ten days from the ascertainment and collection of those duties by the proper officers of customs.

2. That in cases of goods entered in bond the ascertainment and liquidation follow in due course their inspec-

tion and appraisal upon their entry for warehouse, without regard to the time of their withdrawal.

3. That a failure to protest against such ascertainment and liquidation makes the same final and conclusive of the amount to be paid on withdrawal.

> Section 2931 provides that on the entry of any merchandise the decision of the collector as to the rate and amount of the duties shall be final and conclusive against all persons interested therein "unless the importer shall *within ten days after the ascertainment and liquidation of the duties by the proper officers of the customs, as well in cases of merchandise entered in bond as for consumption*, give notice in writing to the collector on each entry if dissatisfied with his decision."

The goods in this case were entered in bond. The question is then when the ascertainment and liquidation of goods entered in bonds properly takes place. Section 2964, which is the section authorizing the bonded and warehouse system, provides that goods of importers in the bonded-warehouse shall be—

> Subject at all times to their order, upon payment of the proper duties and expenses, *to be ascertained on due entry thereof for warehousing.*

Section 2970 provides that any merchandise in a bonded warehouse may be withdrawn within one year from importation on payment of "the duties and charges to which it may be subject by law at the time of such withdrawal," and that after one year and until the end of three years from the date of importation the merchandise "may be withdrawn for consumption on payment *of the duties*

assessed on the original entry and charges" and 10 per cent. added thereto.

It is manifest from these two sections that it was the intention of Congress that there should be an ascertainment and liquidation of duties on goods entered in bond on their entry for warehouse. Of course, this can not be construed to mean that the liquidation is to take place before the entry for warehouse, or exactly at the time the entry is made, because that would be impossible. The only reasonable construction is that liquidation is to be had in due course on the warehouse entry just in the same way as liquidation is had in due course on an entry for consumption after inspection and appraisal.

The provision in section 2970, R. S., that the duties to be paid on withdrawal within one year shall be those to which the goods are subject at the time of withdrawal, is only an express reservation of the power of Congress to change, by law, the duty on goods in warehouse, and was passed probably because of the discussion in the case of *United States* vs. *Benson* (2 Clifford, 520). Congress could not have intended that goods in warehouse for more than one year should be liable to a different duty from that assessed upon those withdrawn before the expiration of the year, except in the additional 10 per cent. The case of *Fabbri* vs. *Murphy* (95 U. S., 191), leaves no doubt that the words "duties * * * to which it may be subject by law at the time of such withdrawal," and the words "duties assessed on the original entry," as the two phrases occur in section 2970, mean the same thing. All goods in in the warehouse are liable, therefore, to the payment of duties assessed upon the original entry.

The language of the condition of the bond has no more significance than that of section 2970, and is only a contractual agreement that Congress may have power to change, by law, the tariff on warehoused goods.

Section 2983 shows that the duties payable on entering the goods in bond shall not be varied on withdrawal, so far at least as the duties depend on the dutiable value of the goods. If the law is changed, as it was in *Fabbri* vs. *Murphy*, a reliquidation must of course be had.

Goods entered in bond and those entered for consumption are treated very much in the same way. A bond is given in double the amount of the estimated duties on the original entry. The goods are then landed, and weighed, measured or gauged. One-tenth of packages are then sent to the appraiser's stores, and after appraisal the collector ascertains and liquidates the duties. (See Regulations of the Treasury, 1884, as to goods entered for consumption, articles 335 to 358 inclusive. As to goods entered in bond, see articles 667–677 inclusive.) Article 677 applies to goods entered in bond, and is as follows:

> The appraisers having reported on the invoice; the weigher, gauger, or measurer, having made his return of the quantity; the damage, if any, having been ascertained; and the dutiable value of the merchandise, and duties, finally determined, the importer, consignee, or agent, may withdraw the goods from warehouse.

It is respectfully insisted therefore that the statutes and regulations provide for an ascertainment and liquidation of the duties on goods entered in bond in due course on

that warehouse entry, and that this must be the ascertainment and liquidation referred to in section 2931, in the words "in cases of merchandise entered in bond."

In neither the Cameron case nor in this, was there any liquidation, except that had on the warehouse entry. The amount fixed thereby was required to be paid on withdrawal.

The language of Mr. Justice Strong in Westray's Case (18 Wallace, 322) and its bearing on the question here involved has been commented on in the brief for the collector in the Cameron Case No. 84, to which reference is made. It is sufficient to say here that the remark made by the learned justice in Westray's Case to the effect that the ascertainment and liquidation made on the warehouse entry was in practice only an estimate of duties, would not be true if applied to the practice by the Treasury Department in 1886, when the facts of the case at bar occurred. This clearly appears from Treasury decisions 6895 and 7982 and the opinion of the Solicitor of the Treasury, given at length in the appendix to the brief for the United States in the Cameron Case.

In regard to the case of *Iselin* vs. *Barney* (5 Blatchford, 185); cited for the defendants in error, it must be said that the decision is of no authority after the decision of this court in *Watson* vs. *Barney* (92 U. S., 449). The case of *Iselin* vs. *Barney* was decided on the theory that the act of 1857 in its provision for protest to be filed within ten days after the entry, applied to the decision of the collector upon the rate and amount of duties, whereas that act in fact only had application to the collector's

decision upon the question whether the goods imported were or were not on the free list.

The act of February 26, 1845, was still in force as to the time for filing protest against a decision upon the rate and amount of duties, and required such protest to be filed at or before payment of the duties. The act of 1845 governed the question arising in the case of *Iselin* vs. *Barney*, and the reasoning of the learned justice who delivered the opinion in that case, erroneously based as it was upon the supposed application of the act of 1857 to the facts of the case, can hardly have the weight of authority.

In conclusion, it is respectfully urged that a construction of section 2931, which has been enforced by the Treasury Department for five years last past, and which now governs the practice, should not be set aside by this court when such construction is so plainly in accordance with the express requirements of secs. 2931, 2964, and 2970.

It is submitted that for the reasons given, the judgment of the circuit court herein should be reversed and judgment entered for the collector.

WM. H. TAFT,
Solicitor-General.

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No. 311. October Term, 1890.

In the Supreme Court of the United States.

John Cadwalader, Collector,
Plaintiff in Error,

vs.

Artemus Partridge and Thomas D. Richardson, trading as Partridge & Richardson,
Defendants in Error.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR DEFENDANTS IN ERROR.

FRANK P. PRICHARD,
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IN THE SUPREME COURT OF THE UNITED STATES.

John Cadwalader, Collector,

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Artemus Partridge and Thomas D. Richardson, trading as Partridge & Richardson.

October Term, 1890.

No. 311.

BRIEF FOR DEFENDANTS IN ERROR.

This case presents but a single point, viz.:—

If an importer enters goods for warehouse, and subsequently and within a year from the time of such entry makes a withdrawal entry for consumption, is his protest against the exaction of illegal duties on such withdrawal entry, in time if made within ten days thereafter, or must his protest have been made within ten days after the original liquidation made by the collector at the time of warehouse entry?

By section 4 of the act of March 28th, 1854, 10 Stat L., 271, goods entered for warehouse might remain for three years, and might at any time within that period be withdrawn for consumption upon payment of the duties. The language of the section is as follows:—

"That all goods, wares and merchandise, which may be hereafter "duly entered for warehousing under bond, and likewise all merchandise "now remaining in warehouse under bond, may continue in warehouse, "without payment of duties thereupon, for a period of three years from "the date of original importation, and may be withdrawn for consump-

"tion on due entry and payment of the duties and charges, or upon "entry for exportation, without the payment of duties, at any time "within the period aforesaid; in the latter case the goods to be subject "only to the payment of such storage and charges as may be due "thereon: *Provided, however*, That where the duties shall have been "paid upon any goods, wares or merchandise entered for consumption, "said duties shall not be refunded on exportation of any such goods, "wares or merchandise without the limits of the United States: *And* "*provided further*, That there shall be no abatement of the duties or "allowance made for any injury, damage, deterioration, loss or leakage "sustained by any goods, wares or merchandise whilst deposited in any "public or private bonded warehouse established or recognized by this "act."

This act contemplated but one liquidation of the duties. The practice under it was to make a rough estimation of the duties for the purpose of fixing the amount of the bond at the time of entry, and then to examine and appraise the goods and liquidate the duties as soon as could conveniently be done after the entry. (See Iselin *vs.* Barney, 5 Blatchford, 185.)

By the fifth section of the act of March 3d, 1857 (11 Stat., L., 195), the decision of the collector as to duties was made final and conclusive, unless protest was made by the importer within ten days after entry. The language of this section is as follows:—

"That on the entry of any goods, wares and merchandise imported "on and after the first day of July aforesaid, the decision of the collec- "tor of the customs at the port of importation and entry, as to their "liability to duty or exemption therefrom, shall be final and conclusive "against the owner, importer, consignee or agent of any such goods, "wares and merchandise, unless the owner, importer, consignee "or agent shall, within ten days after such entry, give notice to "the collector, in writing, of his dissatisfaction with such decision, "setting forth therein distinctly and specifically his grounds of objection "thereto, and shall, within thirty days after the date of such decision, "appeal therefrom to the Secretary of the Treasury, whose decision on "such appeal shall be final and conclusive; and the said goods, wares "and merchandise shall be liable to duty or exempted therefrom ac- "cordingly; any act of Congress to the contrary notwithstanding, unless "suit shall be brought within thirty days after such decision for any "duties that may have been paid, or may thereafter be paid, on said "goods, or within thirty days after the duties shall have been paid in "cases where such goods shall be in bond."

Under this act a question arose whether the ten days ran from the entry for warehousing or the subsequent entry for consumption, and it was held in Iselin *vs.* Barney, *supra*, that, as, owing to the time required for appraisement, the liquidation did not usually take place within ten days after the entry for warehousing, the words must be construed to refer to the subsequent entry for consumption.

By section 14 of the act of June 30th, 1864, 13 Stat. L., 214 (now section 2931, Rev. St.), Congress, in order to remove all question on this point, enacted that the decision of the collector should be final unless the importer protested "within ten days *after the ascertainment and liquidation* by the "proper officers of the customs *as well in case of merchandise* "*entered in bond as for consumption.* The language of the section is as follows:—

"That on the entry of any vessel or of any goods, wares or merchan-
"dise, the decision of the collector of customs at the port of importa-
"tion and entry, as to the rate and amount of duties to be paid on the
"tonnage of such vessel or on such goods, wares or merchandise, and the
"dutiable costs and charges thereon, shall be final and conclusive
"against all persons interested therein, unless the owner, master, com-
"mander or consignee of such vessel, in the case of duties levied on
"tonnage, or the owner, importer, consignee or agent of the merchan-
"dise, in the case of duties levied on goods, wares or merchandise, or the
"cost and charges thereon, shall within ten days after the ascertainment
"and liquidation of the duties by the proper officers of the customs,
"as well in cases of merchandise entered in bond as for consumption,
"give notice in writing to the collector on each entry, if dissatisfied with
"his decision, setting forth therein, distinctly and specifically, the grounds
"of his objection thereto, and shall, within thirty days after the date of
"such ascertainment and liquidation, appeal therefrom to the Secretary
"of the Treasury, whose decision on such appeal shall be final and con-
"clusive; and such vessel, goods, wares or merchandise, or costs and
"charges, shall be liable to duty accordingly, any act of Congress to
"the contrary notwithstanding, unless suit shall be brought within
"ninety days after the decision of the Secretary of the Treasury on
"such appeal for any duties which shall have been paid, before the date
"of such decision on such vessel, or on such goods, wares or merchan-
"dise, or costs or charges, or within ninety days after the payment of
"duties paid after the decision of the Secretary. And no suit shall be
"maintained in any court for the recovery of any duties alleged to have
"been erroneously or illegally exacted until the decision of the Secre-

"tary of the Treasury shall have been first had on such appeal, unless "said decision of the Secretary shall be delayed more than ninety days "from the date of such appeal in case of an entry at any port east of "the Rocky Mountains, or more than five months in case of an entry "west of those mountains."

At the time of the passage of this act the law provided for but one rate of duty both on goods entered in bond and for consumption, and this duty was fixed by a liquidation made by the collector in due course after the first entry of the goods. As the rate of duty paid on withdrawal for consumption was fixed by the liquidation made upon the entry in bond, it is clear that if this act stood alone the importer was bound to protest within ten days from that liquidation.

About two years subsequent to the act of 1864, Congress passed the act of March 14th, 1866, 14 Stat. L., 8 (now section 2970, Rev. Stat.). This made a change in the warehouse system and provided that the importer might withdraw the merchandise within one year upon payment of "the duties "and charges to which it may be subject by law *at the time of* "*such withdrawal*," and that he might withdraw them after one year and within three years upon payment of "*the duties* "*assessed on the original entry* and charges, and an additional "duty of ten per centum." The language of the act is as follows:—

"That on and after the passage of this act, and until the first day of "May, 1866, any goods, wares or merchandise under bond, in any pub- "lic or private bonded warehouse, upon which the duties are unpaid, "may be withdrawn for consumption, and the bonds canceled on pay- "ment of the duties and charges prescribed by law; and any goods, "wares or merchandise deposited in bond, in any public or private "bonded warehouse, on and after the first day of May aforesaid, and all "goods, wares or merchandise remaining in warehouse, under bond, "on said first day of May, may be withdrawn for consumption within "one year from the date of original importation, on payment of the "duties and charges to which they may be subject by law at the time of "such withdrawal; and after the expiration of one year from the date of "original importation, and until the expiration of three years from said "date, any goods, wares or merchandise in bond as aforesaid may be "withdrawn for consumption on payment of the duties assessed on the "original entry and charges, and an additional duty of ten per centum "of the amount of such duties and charges."

As re-enacted in the Revised Statutes (section 2970), this reads :—

"Any merchandise deposited in bond in any public or private bonded "warehouse may be withdrawn for consumption within one year from "the date of original importation, on payment of the duties and charges "to which it may be subject by law at the time of such withdrawal; and "after the expiration of one year from the date of the original importa- "tion, and until the expiration of three years from such date, any mer- "chandise in bond may be withdrawn for consumption on payment of "the duties assessed on the original entry and charges, and an addi- "tional duty of ten per centum of the amount of such duties and "charges."

It will be seen that this act contemplates two different rates of duty according to the time of withdrawal—one based on the original assessment or liquidation, the other to be ascertained according to the law at the time of withdrawal. It is clear that under this act if the importer does not withdraw within one year, but does within three years, inasmuch as the duty is imposed according to the original liquidation, the importer is bound by it unless he protested within ten days from its date. A different question, however, is presented if he withdraws them within one year. In that case the duty is not necessarily based on the original liquidation, but upon an ascertainment at the time of withdrawal. The finding of the collector at the time of entry in bond is not conclusive as to the rate of duty without a further finding by him at the time of withdrawal that such duty is the duty then imposed by law. Here, therefore, is a new liquidation not contemplated by the act of 1864, but within the provision of that statute, giving the importer ten days from the liquidation in which to appeal. The test of this is a simple one. Suppose that after the goods are entered in bond and a liquidation of the duties made the law is changed and a lower rate of duty imposed. The act of 1866 gives the importer the right to have the duties assessed at the lower rate. Suppose now the collector refuses to change the rate of duty and collects the original rate, will it be contended that the importer is bound by this because he did not protest within ten days of the original liquidation, which at the time was undoubtedly proper? Yet